IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 494 of 2000

in

SPECIAL CIVIL APPLICATIONNo 10496 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER RESOURCES DEV. CORPORATION LTD.

Versus

VITHALBHAI GAMBHIRBHAI BARIYA

Appearance:

1. LETTERS PATENT APPEAL No. 494 of 2000

MR DG CHAUHAN for Appellants No. 1-2

MR RS PANJWANI for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 25/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

This is an appeal against the judgment and order dated 10.5.2000 passed in Special Civil Application No.10496 of 1999. The facts giving rise to the present litigation in a nutshell are as under:

2. The respondent was working as a Bore Operator, Class III under the appellant. According to the appellant, as services of the respondent were not required, the respondent was relieved from service. The case of the respondent workman was to the effect that he had worked for more than 240 days in a year for several years and, therefore, without following the provisions laid down in section 25F of Industrial Disputes Act, 1947 (for short, 'the Act'), the respondent workman could not have been retrenched. As service of the respondent workman was terminated, the respondent workman approached the Conciliation Officer and ultimately the dispute with regard to termination had been referred to the Labour Court, Baroda. After considering the evidence and after hearing the learned Advocates, the Labour Court, Baroda [passed an award dated 13.7.1999 whereby it directed the appellant employer to reinstate the workman with 60% backwages with effect from 1.1.1991. The Labour Court had come to the conclusion that the respondent workman had worked for more than 240 days in a year and, therefore, without following the procedure laid down under the provisions of section 25F of the Act, service of the respondent workman could not have been terminated. The case of the appellant employer before the Labour Court was that the respondent workman had not worked for 240 days in a year and, therefore, it was not necessary to follow the procedure under the provisions of Section 25F.

3. As stated hereinabove, after appreciation of evidence, the Labour court came to the conclusion that the respondent workman had worked for more than 240 days in a year and, therefore, it was obligatory on the part of the appellant employer to follow the procedure laid down in Section 25F of the Act before retrenching the respondent workman.

4. Being aggrieved by the award passed by the Labour Court, the appellant had approached this Court by filing Special Civil Application No.10496/99. After hearing the concerned learned Advocates, the learned Single Judge, by an order dated 10.5.2000, rejected the petition and directed the appellant to implement the award within four weeks from the date of receipt of the writ by the appellant. During the pendency of the said Special Civil

Application, in pursuance of an interim order passed by the learned Single Judge, 50% backwages payable to the respondent workman were deposited with this Court and the said amount is still with the office of the High Court.

5. At the time of hearing of this appeal, it has been submitted by Mr D G Chauhan appearing for the employer that in fact the respondent workman had not worked for 240 days in a year and, therefore, it was not necessary for the appellant employer to follow the provisios of Section 25F of the Act. He has, therefore, submitted that the findings arrived at by the Labour Court and confirmed by the learned Single Judge are incorrect. It has been further submitted that during the pendency of the litigation and after the service of the respondent was terminated, the respondent workman was working elsewhere and was also earning substantial amount. The Labour Court has not correctly appreciated the said fact and without appreciation of the evidence, 60% of the backwages was awarded to the respondent workman. According to him the said amount is on higher side.

6. On the other hand, learned Advocate Mr R S Panjwani appearing for the respondent workman has submitted that it would not be proper on the part of this Court to reappreciate the evidence in this appeal. It has been submitted by him that after proper appreciation of evidence, the Labour Court came to the conclusion that the respondent workman had worked for 240 days and the said findings have been confirmed by the learned Single Judge. In the circumstances, it has been submitted by him that the concurrent findings arrived at by the Labour Court as well as the learned Single Judge should not be disturbed by this Court in this appeal. He has, however, fairly submitted that the respondent workman was doing miscellaneous work after termination of his service so as to maintain himself. He has no objection if the amount of backwages awarded by the Labour Court and confirmed by the learned Single Judge is reduced even by 50% i.e. if 30% of the backwages are awarded, the respondent workman would be willing to accept the said amount provided the amount which has already been deposited by the appellant employer is permitted to be withdrawn by the respondent workman immediately.

7. After hearing the learned Advocates and looking to the facts of the case, we are of the view that it would not be proper for this Court to reappreciate the evidence adduced before the Labour Court. We would not like to disturb the concurrent findings arrived at by the

Labour Court as well as the learned Single Judge. Looking to the fact that the respondent workman was working elsewhere and was earning his livelihood and looking to the concession given by the learned Advocate Mr Panjwani appearing for the respondent workman, we modify the award and direct that instead of 60%, 30% of the backwages w.e.f. 1.1.1991 be awarded to the respondent workman. Rest of the award shall remain as it is.

8. In the ciracumstances, the appeal is allowed. The appeal stands disposed of accordingly with no order as to costs. The amount which has been deposited by the appellant shall be permitted to be withdrawn by the respondent workman.

The Registry is directed to pay the amount by A/c. Payee cheque in the name of respondent workman which may be handed over to the learned Advocate appearing for the respondent workman immediately.

25.10.2001 [A R Dave, J.]

[D P Buch, J.]
msp